HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.370 of 2005.

Prashant Gaonkar. ...Petitioner

V/s.

Dhrubajyoti Roy & Anr. ...Respondents.

Shri Badri Prasad Pandey, for petitioner

Shri Khandeparkar with Shri Mohan P. Tekavde, for respondent No.1.

Shri A.S.Gadkari, APP for State.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 29, 2005

P.C. :-

1. Heard counsel for the parties.

2. Rule, made returnable forthwith by consent.

3. Shri Khandeparkar, the counsel waives notice for respondent No.1. Shri A.S.Gadkari, APP waives notice for respondent No.2.

4. This petition takes exception to the order passed by the Metropolitan Magistrate, 22nd Court, Andheri, Mumbai, dated November 2, 2004, in Case No.462/S/2003, rejecting the petitioner’s application for return of

the property, in proceedings which were taken out by the petitioner against the respondent No.1 under Section 630(2) of the Companies Act.

5. The respondent No.1 who was in service of the petitioner company, has resigned from the services of the said company, with effect from 15th March, 2003. Since then, the respondent No.1 is not in service of petitioner company. While in service, the respondent No.1 was provided with a Motor Vehicle-Tata Indica car having Registered No.MH-02-MA-3495, as one of the facility while in service. After his resignation was accepted and he seized to be in employment of the petitioner company, it was expected that vehicle which belongs to the company, would be returned to the company. That did not happen, for which reason the petitioner company has instituted the complaint under section 630 of the companies Act for the return of the company's property, which is unauthorisedly held and possessed by the respondent No.1.

6. During the pendency of the complaint, petitioner took out application for appropriate direction, for return of the said property as interim order in the peculiar fact situation of the present case. That application has been rejected by the lower court, which

is the issue, before this court.

7. After considering materials on record and the oral argument of the counsel appearing for the parties, there is no dispute that the said vehicle belongs to the petitioner company, as it has been purchased by the petitioner company on hire purchase basis and the petitioner company is paying all the outgoings of the said vehicle, even after, the respondent No.1 has seized to be in employment of petitioner company. In that sense, the subject property undisputedly is of the petitioner company. If it is so, after the respondent No.1 seized to be in employment of the company, possession of such property of the company by the respondent No.1 will have to be held as unauthorised and impermissible. In this fact situation, the court below completely misdirected itself in not accepting the request of the petitioner company. The fact that such interim order can be passed atleast where, there is no dispute that the property belongs to company, if any Judgment is required on the point, reliance can be placed on the decision of Calcutta High Court as rightly pressed into service in the case of **Tata Tea Ltd. V/s Fazlur Rahman reported in (2001) 2 Comp L.J.129.** There is yet another Judgment of Calcutta High Court, which has been rightly relied upon by the

petitioner reported in **(1999)3 LLJ(Supp), 1349, in** the case **of Metal Box(India) Ltd. V/s. State of West Bengal.**

8. Accordingly, this petition ought to succed. The impugned order passed by the Magistrate is set aside and instead the application preferred by the petitioner for return of company property is allowed.

9. During the course of argument, the counsel for the respondent No.1 justified the retention of the property of the company on the argument that certain dues are outstanding and receivable by the respondent No.1 from the petitioner company, to the extent of Rs.6 Lakhs. Even if, certain dues are outstanding, that can be no justification for withholding the property of the company, at least, no legal provision has been brought to my notice which can justify the stand taken by the respondent No.1.

10. Although this petition succeeds, the petitioner company may consider the matter sympathetically and resolve all contentious issues pending between them as regards terminal benefits, if any.

11. Needless to observe that the trial court will be

guided by the evidence on record, adduced by the parties and decide the matter uninfluenced by the observations made in this decision, which are only for the limited purpose of deciding, interim prayer pressed into service for return of property.

12. The counsel for the petitioner fairly states that if the subject vehicle is returned by the respondent No.1 in proper condition to the satisfaction of the petitioner, the petitioner may consider of dropping proceedings against the respondent, if so advised. The respondent No.1 is directed to return the property to the authorised officer of the petitioner, not later than two weeks from today.